

Laurence M. Rosen (State Bar No. 219683)  
**THE ROSEN LAW FIRM, P.A.**  
333 S. Grand Ave., 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 785-2610  
Fax: (213) 226-4684  
Email: lrosen@rosenlegal.com

Attorneys for Plaintiff Brad Greenspan

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JIM BROWN, individually and on behalf of all others similarly situated, ) Case No. CV-06-3731 GHK  
Plaintiffs, ) (JTLx)  
vs. )  
BRETT BREWER, et al. )  
Defendants. )  

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) **CLASS ACTION**  
)

) **NOTICE OF CONSENTED**  
**TO MOTION FOR LEAVE**  
)

) **TO WITHDRAW AS**  
**COUNSEL AND**  
)

) **MEMORANDUM OF**  
**POINTS AND**  
)

) **AUTHORITIES IN**  
**SUPPORT THEREOF**

Judge: Hon. George H. King  
Date: September 13, 2010  
Time: 9:30 a.m.  
Place: Courtroom 650

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on September 13, 2010 at 9:30 a.m.,  
3 or as soon thereafter as the matter may be heard in the above-entitled court  
4 located at 312 N. Spring Street, Courtroom 650, Los Angeles, CA, counsel  
5 for Plaintiff Brad Greenspan (“Greenspan”) will move and hereby does  
6 move this Court for an order permitting The Rosen Law Firm, P.A.  
7 (“Rosen”) to withdraw as counsel for Greenspan in the present action.

8 The following are grounds for this motion to withdraw:

9 1. Greenspan has not paid any of the agreed upon legal fees to  
10 Rosen for legal work Rosen had performed in this litigation to date.

11 2. Greenspan and Rosen have not been able to agree to the terms  
12 of a retainer agreement for Rosen to perform future legal services for  
13 Greenspan in this litigation.

14 3. Greenspan and Rosen are unable to agree on the proper strategy  
15 and direction for Greenspan to proceed in this litigation, rendering Rosen  
16 unable to effectively represent Greenspan.

17 4. Rosen’s withdrawal will not prejudice any other party by  
18 causing any material delay to this litigation.

19 5. Indeed, all other parties have consented to this motion to  
20 withdraw.

21 6. Greenspan may immediately hire another attorney or represent  
22 himself *pro se*.

23 7. Rosen’s withdrawal will not harm the administration of justice,  
24 and will not delay the resolution of this case.

25 8. Rosen has provided numerous notices to Greenspan of the  
26 present motion to withdraw.

9. Papers may continue to be served on Rosen until either substitute counsel files a notice of appearance or Greenspan files a notice to appear *pro se*, Rosen will forward all such papers to Greenspan until then.

This motion is based on this Notice of Motion, the Memorandum of Points and Authorities attached hereto, the Declaration of Laurence M. Rosen attached thereto, and upon any such other evidence and oral argument as may be presented to the Court at the time of the hearing.

DATED: August 2, 2010

Respectfully submitted,

/s/ Laurence M. Rosen  
Laurence M. Rosen (CSB# 219683)  
The Rosen Law Firm, P.A.  
333 S. Grand Ave., 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 785-2610  
Fax: (213) 226-4684  
Email: lrosen@rosenlegal.com  
Attorneys for Plaintiff Brad  
Greenspan

1                   MEMORANDUM OF POINTS AND AUTHORITIES

2                   The Rosen Law Firm, P.A. (“Rosen”) hereby moves this Court for an  
3 order permitting Rosen to withdraw as counsel for Plaintiff Brad Greenspan  
4 (“Greenspan”) in the present action.

5                   Local Rule 83-2.9.2.1 requires an attorney to seek leave from the  
6 court before withdrawal. “The decision to grant or deny counsel’s motion to  
7 withdraw is within the discretion of the trial court.” *Huntington Learning*  
8 *Centers, Inc. v. Education Gateway, Inc.*, 2009 WL 2337863, \*1 (C.D. Cal.  
9 July 28, 2009) (citing *Irwin v. Mascott*, 2004 LEXIS 28264, at \*3 (N.D. Cal.  
10 Dec. 1, 2004). The trial court often weighs the following four factors to  
11 determine whether to grant a motion to withdraw as counsel: “(1) the  
12 reasons why withdrawal is sought; (2) the prejudice withdrawal may cause  
13 to other litigants; (3) the harm withdrawal might cause to the administration  
14 of justice; and (4) the degree to which withdrawal will delay the resolution  
15 of the case.” *Id.*; *Irwin v. Mascott*, 2009 WL 2337863 at \*4; *Beard v.*  
16 *Shuttermart of Cal., Inc.*, 2008 WL 410694, \*2-3 (S.D. Cal. Feb. 13, 2008);  
17 *Kassab v. San Diego Police Dep’t*, 2008 WL 251935, \*1 (S.D. Cal. Jan. 29,  
18 2008); *Taylor v. Stewart*, 20 F. Supp. 2d 882, 883-85 (E.D. Pa. 1998).

19                   “Pursuant to Local Rule 83-3.1.2, attorneys must follow the  
20 California Code of Professional Conduct and act accordingly.” *Nedbank*  
21 *Intern., Ltd. v. Xero Mobile, Inc.*, 2008 WL 4814706, \*1 (C.D. Cal. Oct. 30,  
22 2008). The California Code of Professional Conduct permits withdrawal  
23 where the client (1) “render[s] it unreasonably difficult for the member to  
24 carry out the employment effectively” or (2) “breaches an agreement or  
25 obligation to the member as to expenses or fees.” Cal. Code of Prof’l  
26 Conduct R. 3-700(C)(1).

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1       These factors support the withdrawal as counsel by Rosen. It is  
2 practically impossible for Rosen to continue as attorney for Greenspan  
3 because Greenspan and Rosen are unable to agree on any strategy or plan  
4 for how to proceed and what steps to take in the litigation that he or Rosen  
5 proposes. *See Nedbank Intern., Ltd. v. Xero Mobile, Inc.*, 2008 WL  
6 4814706 at \*2. Additionally, Plaintiff has not paid any of the legal fees that  
7 he already agreed to pay Rosen for numerous hours of legal work already  
8 done, and resists executing a retainer agreement pertaining to future legal  
9 work to be done on Plaintiff's behalf by Rosen. *Id.*

10      Under the second factor, the Court must consider the prejudice to  
11 Plaintiff Jim Brown ("Plaintiff") and Defendants that a delay in the  
12 litigation would cause. *Id.* First, Plaintiff and all Defendants have  
13 consented to this Motion, so it cannot prejudice the other parties even if it  
14 causes a delay in the litigation, which it does not.

15      Moreover, granting Rosen's motion to withdraw as counsel, at most,  
16 will only minimally delay the execution of the Court's current order for  
17 Plaintiff, Defendants, and Greenspan to meet and confer on the substance of  
18 Defendant's motion to exclude Greenspan from the Class. Dkt. No. 294.  
19 Considering that the first complaint in this action was filed more than four  
20 years ago, Dkt. No. 1, and that Rosen submitted Greenspan's Notice of  
21 Appearance in this action for the first time a little over a month ago, Dkt.  
22 No. 280, any delay in the litigation caused by Rosen's withdrawal as  
23 Greenspan's counsel will be extremely immaterial. Regardless, Greenspan  
24 may hire another attorney to represent him or may appear *pro se*  
25 immediately. *See L.R. 83-2.9.2.2* ("Individuals. When an attorney of record  
26 for any reason ceases to act for a party, such party shall appear *pro se* or  
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1 appoint another attorney by a written substitution of attorney signed by the  
2 party and the attorneys”).

3 Even if the Court finds that Rosen’s withdrawal of counsel would  
4 more than minimally delay the litigation, Rosen filed Greenspan’s Notice of  
5 Appearance out of good faith in haste before Greenspan paid Rosen or  
6 executed a retainer agreement. Indeed Rosen’s reason for filing  
7 Greenspan’s Notice of Appearance was to comply as closely as possible to  
8 the Court-ordered deadline to file a notice of appearance, which had already  
9 passed by the time Greenspan first discussed with Rosen his retaining Rosen  
10 as counsel. *See* Notice Plan submitted as Exhibit B to the Joint Motion to  
11 Approve the Form and Manner of Class Notice. Docket No. 231-2.

12 As to the third and fourth factors, without a doubt granting this  
13 motion will not harm the administration of justice, and will not delay the  
14 resolution of this case. As stated above, Plaintiff and Defendants have  
15 consented to this Motion.

16 Based on the foregoing grounds, Rosen requests that this Court grants  
17 its motion and order for Rosen to withdraw as counsel to Greenspan in this  
18 action, effective immediately.

19 DATED: August 2, 2010

20 Respectfully submitted,

21 /s/ Laurence M. Rosen  
22 Laurence M. Rosen (CSB# 219683)  
23 The Rosen Law Firm, P.A.  
24 333 S. Grand Ave., 25<sup>th</sup> Floor  
25 Los Angeles, CA 90071  
26 Telephone: (213) 785-2610  
27 Fax: (213) 226-4684  
28 Email: lrosen@rosenlegal.com

1 Attorneys for Plaintiff Brad  
2 Greenspan  
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## **PROOF OF SERVICE**

I, the undersigned, declare:

I am employed at The Rosen Law Firm, P.A. in the County of New York, New York. I am over the age of eighteen and not a party to the within action; my business address is 350 Fifth Avenue, Suite 5508, New York, NY 10118.

On August 2, 2010, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I served the following documents on the individuals listed on the attached Service List via U.S. mail, in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules:

**NOTICE OF CONSENTED TO MOTION AND CONSENTED  
TO MOTION FOR LEAVE TO WITHDRAW AS COUNSEL  
AND MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF:**

**DECLARATION OF LAURENCE M. ROSEN IN SUPPORT OF  
CONSENTED TO MOTION FOR LEAVE TO WITHDRAW AS  
COUNSEL:**

**[PROPOSED] ORDER FOR THE ROSEN LAW FIRM, P.A. TO  
WITHDRAW AS COUNSEL FOR PLAINTIFF BRAD  
GREENSPAN.**

1 I certify under penalty of perjury under the laws of the United States  
2 of America that the foregoing is true and correct.

3 Executed August 2, 2010 in New York, NY.  
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5 /s/ Laurence Rosen  
6 Laurence Rosen  
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## Service List

<sup>1</sup> Ramzi Badou  
<sup>2</sup> Barroway Topaz Kessler Meltzer & Check, LLP  
<sup>3</sup> 280 King of Prussia Road  
Radnor, PA 19087

5 Michael D. Torpey  
6 Stephen M. Knaster  
7 James N. Kramer  
8 Teodora Manolova  
9 Erin Bansal  
10 Orrick Herrington & Sutcliffe  
11 405 Howard St.  
12 San Francisco, CA 94105  
13 sknaster@orrick.com  
jkramer@orrick.com,jthompson@orrick.com  
tmanolova@orrick.com  
mtorpey@orrick.com

14 Darren J. Robbins  
15 Randall J. Baron  
16 Stephen J. Oddo  
17 David T. Wissbroecker  
18 Coughlin Stoia Geller Rudman & Robbins  
19 655 West Broadway, Suite 1900  
20 San Diego, CA 92101  
21 randyb@rgrdlaw.com,e\_file\_sd@rgrdlaw.com  
e\_file\_sd@rgrdlaw.com  
dwissbroecker@rgrdlaw.com,e\_file\_sd@rgrdlaw.com

22 Pamela S. Palmer  
23 Bety Javidzad  
24 Rebecca M. Couto  
25 Latham & Watkins  
26 355 So. Grand Avenue  
27 Los Angeles, CA 90071  
28 rebecca.couto@lw.com  
bety.javidzad@hoganlovells.com,LA-Docketing@hoganlovells.com  
pamela.palmer@lw.com

1 Richard Lee Stone  
2 Julie A. Shepard  
3 Elizabeth A. Moriarty  
4 Asheley G. Dean  
5 Hogan & Hartson  
6 1999 Avenue of the Stars, Suite 1400  
7 Los Angeles, CA 90067  
8 asheley.dean@hoganlovells.com,LA-  
9 Records@hhlaw.com,dolores.valencia@hoganlovells.com  
10 elizabeth.moriarty@hoganlovells.com,pdelarosa@hhlaw.com,bea.goncalves  
11 @hoganlovells.com,cmelias@hhlaw.com  
12 julie.shepard@hoganlovells.com,LA-  
13 Docketing@hoganlovells.com,susan.bryant@hoganlovells.com,LA-  
14 Records@hoganlovells.com  
15 richard.stone@hoganlovells.com,maria.reyes@hoganlovells.com  
16  
17 Christy W. Goodman  
18 Molly Roff-Sheridan  
19 Goodman, Sheridan & Roff  
20 1010 Second Avenue, Suite 1350  
21 San Diego, CA 92101  
22 cgoodman@gsrllp.com  
23  
24 George A. Shohet  
25 Law Offices of George A. Shohet  
26 245 Main St., Suite 310  
27 Venice, CA 90291  
28 georgeshohet@gmail.com  
29  
30 Mr. Brad Greenspan  
31 264 South La Cienega, Suite 1218  
32 Beverly Hills, 90211  
33 bspan@earthlink.net  
34  
35  
36  
37  
38